



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Concluding observations on the combined third to fifth periodic reports of Latvia\*

1. The Committee against Torture considered the combined third to fifth periodic reports of Latvia (CAT/C/LVA/3-5) at its 1176th and 1179th meetings, held on 31 October and 1 November 2013 (CAT/C/SR.1176 and CAT/C/SR.1179), and adopted the following concluding observations at its 1199th meeting (CAT/C/SR.1199) held on 15 November 2013.

#### A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its combined third to fifth periodic report in a timely manner by providing replies to the list of issues (CAT/C/LVA/Q/5), which focuses the examination of the report as well as the dialogue with the delegation.

3. The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the detailed supplementary information provided.

#### B. Positive aspects

4. The Committee welcomes the fact that, since the consideration of the second periodic report, the State party has ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention on the Rights of Persons with Disabilities on 31 August 2010;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 19 April 2013.

5. The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Amendments to article 273 of the Criminal Procedure Law concerning the grounds for detention of juveniles, on 12 March 2009;

\* Adopted by the Committee at its fifty-first session (28 October–22 November 2013).



- (b) Entry into force of the new Asylum Law on 14 July 2009;
  - (c) Amendments to the Law on the Procedures for the Coming into Force and Application of the Criminal Law supplementing the law with article 24 on the definition of torture, on 23 December 2009;
  - (d) Entry into force of the Law on Patients' Rights, which protects the rights of juveniles in particular and provides for a patient's right to claim compensation, on 1 March 2010;
  - (e) Amendments to the Law on Medical Treatment concerning the actions of medical institutions if patients have been subjected to violence, which entered into force on 1 January 2011;
  - (f) Amendments to the Law on Enforcement of Sentences concerning the resocialization of prisoners, introduced on 8 August 2011;
  - (g) Abolition of the death penalty from the Criminal Law, on 1 December 2011.
6. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:
- (a) Adoption of the basic guidelines on the improvement of the mental health of the population for 2009–2014, on 6 August 2008;
  - (b) Adoption by the Government of the concept on resocialization of convicted persons sentenced to deprivation of liberty, on 9 January 2009;
  - (c) Adoption of the basic policy guidelines for the enforcement of prison sentences and detention of juveniles for 2007–2013, on 2 March 2010;
  - (d) Adoption by the Cabinet of Ministers of the regulation setting out the procedure for providing community service as an alternative to imprisonment, including in the case of minors, on 9 February and 3 August 2010;
  - (e) Publication by the Office of Citizenship and Migration Affairs of a commentary to the Asylum Law, with a view to improving the quality of the asylum procedure, January 2010.

## **C. Principal subjects of concern and recommendations**

### **Definition of torture**

7. While taking note of the amendments to the Law on the Procedures for the Coming into Force and Application of the Criminal Law, supplementing the law with article 24 which defines torture, and recalling its previous concluding observations (CAT/C/LVA/CO/2, para. 5), the Committee is concerned that the definition of torture does not reflect all of the elements contained in article 1 of the Convention, which may create loopholes for impunity, as outlined in general comment No. 2 (2007) on implementation of article 2 by States parties (art. 1).

**The State party should amend its legislation to include a definition of torture in conformity with the Convention, which covers all the elements contained in article 1, including the inflicting of torture on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.**

### **Torture as a specific criminal offence and the statute of limitations for acts of torture**

8. The Committee is concerned that, since torture is not a separate offence under Criminal Law, the penalties for acts of torture have been incorporated into different articles of the Criminal Law, that are not appropriate punishment for such criminal offences, taking into account their gravity. It is also concerned that acts of torture and attempts to commit torture, as well as acts by persons that constitute complicity or participation in torture, are subject to a statute of limitations of 10 years in most cases, which may result in impunity for perpetrators of such acts (arts. 2 and 4).

**The State party should amend its legislation to include torture as a specific offence in the Criminal Law, with appropriate penalties for acts of torture that take into account their grave nature, as set out in article 4 (2) of the Convention. In addition, the State party should ensure that the prohibition against torture is absolute and that there is no statute of limitations for acts of torture, so that acts of torture and attempts to commit torture and acts by persons which constitute complicity or participation in torture can be investigated, prosecuted and punished without time limitations.**

### **Fundamental legal safeguards**

9. The Committee is concerned that persons deprived of their liberty do not enjoy in practice all the fundamental legal safeguards against torture and ill-treatment that should be afforded from the very outset of deprivation of liberty, such as access to a lawyer and an independent doctor and the right to inform a relative or person of their choice from the very outset of their detention. It is also concerned at reports of a shortage of lawyers and that lawyers providing “State-ensured legal aid” are reluctant to do so for lack of appropriate remuneration (arts. 2, 12, 13 and 16).

#### **The State party should:**

(a) **Take effective measures to guarantee that all detained persons are afforded, by law and in practice, all the fundamental legal safeguards from the outset of their being deprived of liberty, in particular prompt access to a lawyer and, if necessary, to legal aid; that a relative or person of their choice is informed; and access to a medical examination by an independent doctor, if possible a doctor of their choice, in accordance with international standards;**

(b) **Ensure the implementation of regulation No. 1493 on the types and amount of State-ensured legal aid, the amount of payment and the reimbursable expenses related to the provision of legal aid and the amount of and procedures for payment, adopted by the Cabinet of Ministers on 22 December 2009 in order to increase the number of contracted, sworn legal aid attorneys to provide adequate assistance to all persons requiring State-provided legal aid, including in remote rural areas.**

### **Pretrial detention**

10. While noting the reduction in the number of prisoners and detainees since the adoption of the criminal policy document that came into force on 1 April 2013, the Committee is concerned at information that no amendments were adopted concerning the duration of pretrial detention, including in police custody, during the reporting period. It is also concerned that national law does not provide time limits measured in days or hours, pursuant to which a person may be kept in small police stations (arts. 2, 10 and 16).

#### **The State party should:**

(a) **Adopt all necessary measures to reduce the duration of pretrial detention and devise alternative measures to incarceration;**

(b) Ensure that there is no pretrial detention in police stations and devise alternative, non-custodial measures to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) when devising the alternative measures to preventive detention;

(c) Ensure that persons remanded in custody are always promptly transferred to a prison;

(d) Take steps, including of a legislative nature, to ensure that the return of prisoners to police detention facilities is sought and authorized only exceptionally, for specific reasons and for the shortest possible time. Such a return should in each case be subject to the authorization of a prosecutor or judge and should never be carried out by the sole decision of a police investigator;

(e) Establish strict rules concerning the duration of detention in police stations, ensure their effective application by the judiciary and devise alternative measures to incarceration.

#### **Administration of justice**

11. The Committee is concerned at the lack of efficiency of the judicial system, the unjustified slowness of both civil and criminal proceedings and the backlog of cases. (art. 2).

#### **The State party should:**

(a) Reform the judicial system with a view to enhancing the speed and efficiency of judicial proceedings, in particular with regard to criminal justice;

(b) Take measures to strengthen the judiciary in the performance of its functions and improve further the regime of appointment, promotion and dismissal of judges in line with relevant international standards, including the Basic Principles on the Independence of the Judiciary.

#### **Excessive use of force**

12. The Committee is concerned at allegations of excessive use of force and instances of ill-treatment by law enforcement personnel at the time of apprehension and during investigation in police facilities. It is further concerned at the absence of a data collection system on cases of ill-treatment and at the low number of disciplinary and criminal sanctions. The Committee is also concerned at information that complaints and allegations concerning physical violence and ill-treatment by police officers are examined by the Internal Security Office of the State Police, which is part of the police force, and at the absence of information on the outcome of these investigations and on any compensation to the victims (arts. 2, 10, 12, 13, 14 and 16).

#### **The State party should:**

(a) Ensure that all reports of ill-treatment and excessive use of force by law enforcement personnel are investigated promptly, effectively and impartially, both at the disciplinary and the criminal level, by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;

(b) Ensure that persons suspected of having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation;

(c) Prosecute persons suspected of physical violence and ill-treatment and, if found guilty, ensure that they are punished in accordance with the gravity of their

acts and that their victims are afforded appropriate redress, in accordance with article 14 of the Convention;

(d) **Ensure that law enforcement officials are trained in professional techniques and international standards on the use of force and firearms, which minimize any risk of harm to apprehended persons, on the absolute prohibition of torture and ill-treatment and on the liabilities in cases of excessive use of force.**

#### **National human rights institution**

13. Recalling its previous concluding observations (para.6) adopted in November 2007, the Committee is concerned at reports calling into question the independence of the Ombudsman, the scope of his or her mandate and the financial and staffing capacity to fulfil the mandate and workload and carry out the functions of an independent national human rights institution in accordance with the Principles relating to the Status of National Institutions (the Paris Principles) (art. 2).

**The State party should establish a national institution for the promotion and protection of human rights, with adequate financial and staffing resources, in full compliance with the Principles relating to the Status of National Institutions (the Paris Principles) and seek accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.**

#### **Domestic violence**

14. While noting amendments introducing aggravating circumstances of violence and threat of violence in article 48 of the Criminal Law and recalling its previous concluding observations (para. 20), the Committee remains concerned that domestic violence is not defined as a specific crime in the Criminal Law and that marital rape is not recognized as a separate criminal offence. It is also concerned at the absence of protection measures, such as restraining orders, against perpetrators of domestic violence and physical abuse, at the inadequate support from the State party in the running of shelters specifically for abused women and the fact that psychosocial and legal rehabilitation services are provided mainly by non-governmental organizations (arts. 2, 12, 13, 14 and 16).

#### **The State party should:**

(a) **Adopt comprehensive legislation on violence against women that would establish domestic violence and marital rape as specific offences in the Criminal Law;**

(b) **Ensure that all reports of domestic violence, including sexual violence and violence against children, are registered by the police, that all such incidences of violence are promptly, impartially and effectively investigated and perpetrators prosecuted and, if found guilty, punished in accordance with the gravity of their acts;**

(c) **Sensitize and train law enforcement personnel in investigating and prosecuting cases of domestic violence;**

(d) **Ensure that victims of domestic, including sexual, violence benefit from protection, including restraining orders for the perpetrators, and have access to medical and legal services, including psychosocial counselling, to reparation, including rehabilitation, and to safe and adequately funded shelters specifically for abused women, which the State directly runs and supports.**

#### **Trafficking in human beings**

15. While welcoming the bilateral agreements on cooperation against trafficking in persons that the State party has concluded with 20 countries and the adoption of the State programme for the prevention of human trafficking, the Committee is concerned that the

State party remains a country of origin for human trafficking for purposes of sexual and labour exploitation (arts. 2, 10, 12, 13 and 16).

**The State party should:**

(a) **Take effective measures to prevent human trafficking, such as vigorously enforcing anti-trafficking legislation and enhancing international cooperation, as well as intensifying action against marriages of convenience that may result in human trafficking;**

(b) **Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;**

(c) **Increase the protection of and provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, including the introduction of specific rehabilitation services for victims of trafficking, adequate shelters and assistance in reporting incidents of trafficking to the police;**

(d) **Enhance specialized training for the police, prosecutors and judges, migration officers and border police, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on effective prevention, investigation, prosecution and punishment of acts of trafficking and conduct nationwide awareness-raising campaigns, including through the media, about the criminal nature of such acts.**

**Non-citizen residents**

16. While welcoming the significant reduction in the number of so-called “non-citizen residents” from 29 per cent in 1995 to 13 per cent at present and the amendments to the Citizenship Law introduced in May 2013 allowing for a simplified naturalization procedure, the Committee is concerned at the large number of non-citizens residing permanently in the State party (arts. 2 and 16).

**The State party should:**

(a) **Invite non-citizen residents to avail themselves of the simplified naturalization procedure in the Citizenship Law, as amended in May 2013, and facilitate the granting of citizenship to and naturalization and integration of non-citizens;**

(b) **Enhance efforts to raise the awareness of parents whose children are eligible for naturalization and consider granting automatic citizenship at birth, without previous registration by parents, to the children of non-citizen parents who do not acquire any other nationality, with a view to preventing statelessness;**

(c) **Consider offering language courses free of charge to all non-citizen residents and stateless persons who wish to apply for Latvian citizenship.**

**Situation of asylum seekers**

17. The Committee is concerned:

(a) That persons seeking asylum may not enjoy all the procedural guarantees, including access to legal counsel and the right to appeal negative decisions;

(b) That the risk of *refoulement* may exist in cases where appeals of negative decisions under the accelerated asylum procedure may not have a suspensive effect;

(c) That the detention of asylum seekers is not only used as a measure of last resort and that asylum seekers who are minors may be detained starting at the age of 14 (arts. 3 and 16).

**The State party should:**

(a) **Take all necessary measures to abide by its obligations under article 3 of the Convention and refrain from expelling, returning (*refouler*) or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture;**

(b) **Ensure that all persons seeking asylum in the State party, including at its border-crossing points, enjoy all procedural guarantees, including access to legal assistance and interpreters and the right of appeal against negative decisions;**

(c) **Ensure that decisions concerning asylum, including under the accelerated procedure, can be appealed and have a suspensive effect in order to avoid the risk of *refoulement*;**

(d) **Use detention of asylum seekers only as a measure of last resort for as short a period as possible, refrain from detaining minors and revise policy in order to bring it in line with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention of the Office of the United Nations High Commissioner for Refugees.**

**Training**

18. The Committee is concerned at the absence of specific methodologies to evaluate the effectiveness and impact on a reduction in the number of cases of torture and ill-treatment of the training and educational programmes on the absolute prohibition of torture and ill-treatment and on the provisions of the Convention for law enforcement personnel, prison staff, border guards, medical personnel, judges and prosecutors. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not provided to all medical professionals dealing with persons deprived of liberty and asylum seekers. (art. 10).

**The State party should:**

(a) **Develop specific methodologies to evaluate the effectiveness and impact of training and educational programmes on the absolute prohibition of torture and ill-treatment provided to law enforcement, prison staff, border guards, medical personnel, judges and prosecutors;**

(b) **Ensure that the Istanbul Protocol is made an essential part of the training for all medical professionals and other public officials involved in work with persons deprived of their liberty and asylum seekers.**

**Conditions of detention**

19. The Committee is concerned (arts. 11, 13 and 16):

(a) That the material conditions of detention in places of deprivation of liberty and in particular those that are old, continue to fall short of international standards with regard to infrastructure, hygiene and sanitary conditions, living space and regime of activities, in particular for prisoners serving life sentences and remand prisoners;

(b) At serious deficiencies and considerable delays in the provision of medical, psychological and dental health care, especially as the latter is at the expense of the inmates;

(c) At the material conditions in most police detention facilities, including limited or no access to natural light and ventilation, unhygienic cells and inadequate sanitary facilities, which are not in conformity with international standards;

(d) That the Law on the Procedure of Detention on Remand stipulates that the space in multi-occupancy cells should be not less than 3m<sup>2</sup> per person.

**The State party should:**

(a) Continue to take steps to improve the material conditions in all prisons and police detention centres with regard to infrastructure, hygiene and sanitary conditions, heating, living space and regime of activities, in particular for prisoners serving life sentences and remand prisoners, in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(b) Ensure the provision of adequate medical, psychological and prompt dental health care for all inmates free of charge;

(c) Ensure that the renovation of existing places of detention continues according to schedule;

(d) Ensure the existence of impartial and independent mechanisms to monitor places of deprivation of liberty, deal with the complaints of inmates about their conditions of detention and provide effective follow-up to such complaints;

(e) Ensure that the space provided should not be less than 4m<sup>2</sup> per prisoner in multi-occupancy cells, in accordance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

**Inter-prisoner violence**

20. The Committee is concerned at the persistence of inter-prisoner violence and the lack of investigation of such violence, especially in view of the high number of cases. It is further concerned at reports relating to instances of deaths in custody as a result of violence (arts. 2, 11, 12, 13 and 16).

**The State party should:**

(a) Enhance steps to reduce inter-prisoner violence, including by strengthening the monitoring and management of vulnerable prisoners and other prisoners at risk;

(b) Continue and enhance the training of prison staff and medical personnel regarding communication with and managing of inmates and on detecting signs of vulnerability;

(c) Strengthen the effectiveness of complaints mechanisms for reporting cases of violence or other abuses and enhance the financial and staffing capacity of the Ombudsman and other independent mechanisms to visit regularly all places of detention;

(d) Promptly, thoroughly and impartially investigate all cases of inter-prisoner violence and deaths in custody, prosecute and punish those found guilty with appropriate penalties and provide redress to victims or their relatives.

**Use of restraints in prisons**

21. The Committee is concerned by reports of unjustified use of restraints in prisons, such as the routine handcuffing of prisoners serving life sentences when outside their cells (arts. 2, 11 and 16).

**The State party should:**

(a) Abolish the routine handcuffing of prisoners serving life sentences;



**(b) Ensure that all complaints of violations with regard to handcuffing are promptly, effectively and independently investigated and the persons responsible are held to account.**

#### **Redress, including compensation and rehabilitation**

22. The Committee is concerned that there is no explicit provision in domestic legislation that provides for the right of victims of torture and ill-treatment to fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention. It is also concerned that specific rehabilitation services have not been established and regrets the lack of data regarding the amount of any compensation awards made by the courts to victims of violations of the Convention and on any treatment and social rehabilitation services provided to victims, including medical and psychosocial rehabilitation (art. 14).

**The State party should amend its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention. It should, in practice, provide all victims of torture or ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible, regardless of whether perpetrators of such acts have been brought to justice. It should allocate the necessary resources for the effective implementation of rehabilitation programmes.**

**The Committee draws the attention of the State party to its general comment No. 3 (2012) on the implementation of article 14 by States parties, which clarifies the content and scope of the obligations of States parties to provide full redress to victims of torture.**

#### **Persons with disabilities**

23. While taking note of the amendments to the Law on Medical Treatment and trends toward deinstitutionalization in the State party, the Committee is concerned at information that disadvantaged or low-income patients accommodated in psycho-neurological medical institutions who are allowed to leave are unable to do so for lack of living space, work and means of subsistence (arts. 2, 11 and 16).

#### **The State party should:**

**(a) Ensure adequate social conditions, including living space, work and means of subsistence, for disadvantaged or low-income patients accommodated in medical institutions to enable them to leave those institutions;**

**(b) Establish an independent complaints mechanism and counsel and effectively, promptly and impartially investigate all complaints of ill-treatment of persons with mental and psychosocial disabilities in psychiatric institutions, bring those responsible to justice and provide redress;**

**(c) Ensure effective legal safeguards for all persons with mental and psychosocial disabilities and comply with the recommendations of the Ombudsman regarding the keeping of records in such a way that a patient's consent is requested both in hospitalizing him or her and determining his or her psychiatric medical treatment in the institutions.**

#### **Other issues**

24. The Committee reiterates its recommendation that the State party consider making the declarations under articles 21 and 22 of the Convention.

25. The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

26. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages, including Russian, through official websites, the media and non-governmental organizations.

27. The State party is invited to update its common core document, in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

28. The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations relating to: (a) strengthening legal safeguards for persons deprived of their liberty; (b) conditions of detention; and (c) use of restraints, as contained in paragraphs 9, 19 and 21 respectively of the present document.

29. The State party is invited to submit its next report, which will be the sixth periodic report, by 22 November 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.

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